

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

YVONNE JENSEN,

Plaintiff,

v.

CITY AND COUNTY OF SAN
FRANCISCO DEPARTMENT OF
CHILD AND YOUTH SERVICES, et al.,

Defendants.

Case No. 2:24-cv-01289-DJC-CSK

ORDER AND FINDINGS AND
RECOMMENDATIONS

(ECF Nos. 1, 2, 3)

Plaintiff Yvonne Jensen is representing herself in this action and seeks leave to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C. § 1915.¹ (ECF No. 2.) For the reasons outlined below, the Court recommends Plaintiff's IFP request be DENIED, and the Complaint² be dismissed without leave to amend for lack of subject matter jurisdiction and failure to state a claim.

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¹ This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. Civ. P. 72, and Local Rule 302(c).

² Plaintiff filed a pleading labeled as a purported removal of a state court action. See ECF No. 1. Because there is no indication that this is a true and proper removal, Plaintiff's filing is construed as a Complaint initiating action in this federal court. See *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (liberal construction appropriate of pro se pleadings).

I. MOTION TO PROCEED IN FORMA PAUPERIS

28 U.S.C. § 1915(a) provides that the court may authorize the commencement, prosecution or defense of any suit without prepayment of fees or security “by a person who submits an affidavit stating the person is “unable to pay such fees or give security therefor.” This affidavit is to include, among other things, a statement of all assets the person possesses. *Id.* The IFP statute does not itself define what constitutes insufficient assets. *See Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015). In *Escobedo*, the Ninth Circuit stated that an affidavit in support of an IFP application is sufficient where it alleges that the affiant cannot pay court costs and still afford the necessities of life. *Id.* “One need not be absolutely destitute to obtain benefits of the in forma pauperis statute.” *Id.* Nonetheless, a party seeking IFP status must allege poverty “with some particularity, definiteness and certainty.” *Id.* According to the United States Department of Health and Human Services, the current poverty guideline for a household of 1 (not residing in Alaska or Hawaii) is \$15,060.00. *See* U.S. Dpt. Health & Human Service (available at <https://aspe.hhs.gov/poverty-guidelines>).

Here, Plaintiff’s affidavit indicates she receives a gross wage of \$24 per hour, and a take-home biweekly wage of \$1,400, i.e., \$33,600 annually, with a monthly net income of \$2,800. *See* ECF No. 2. Plaintiff states she has no liquid assets and has monthly expenses of approximately \$2,275. *Id.*

Thus, Plaintiff’s gross household income significantly exceeds the 2024 poverty guideline and she has approximately \$525 per month remaining in expendable income. Given this, the Court cannot find Plaintiff unable to pay. *See Escobedo*, 787 F.3d at 1234. While the Court is sympathetic to Plaintiff’s situation, she is not indigent and numerous litigants in this court have significant monthly expenditures. Thus, the Court recommends Plaintiff’s IFP motion be denied. *See Tripathi v. Rison*, 847 F.2d 548 (9th Cir. 1988) (absent consent of all parties, magistrate judge lacks authority to issue dispositive order denying in forma pauperis status).

Further, “[a] district court may deny leave to proceed in forma pauperis at the

outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.” *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting *Tripathi v. First Nat. Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also *McGee v. Department of Child Support Services*, 584 Fed. Appx. 638 (9th Cir. 2014) (“the district court did not abuse its discretion by denying McGee’s request to proceed IFP because it appears from the face of the amended complaint that McGee’s action is frivolous or without merit”); *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the District Court to examine any application for leave to proceed in forma pauperis to determine whether the proposed proceeding has merit and if it appears that the proceeding is without merit, the court is bound to deny a motion seeking leave to proceed in forma pauperis.”). The Court therefore also recommends Plaintiff’s IFP motion be denied because, as discussed in more detail below, it appears from the face of the Complaint that this action is frivolous and lacks merit.

Presently, a filing fee of \$405.00 is required to commence a civil action in this court. In recognition of Plaintiff’s financial resources, the Court finds it appropriate to allow Plaintiff the opportunity to pay the filing fee in three (3) monthly installments until the full filing fee is satisfied.

II. SCREENING REQUIREMENT

Even if the Court were to grant Plaintiff’s IFP motion, Plaintiff’s Complaint warrants dismissal pursuant to 28 U.S.C. § 1915(e)’s required pre-answer screening. Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis proceeding, and must order dismissal of the case if it is “frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (2000) (en banc). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the court accepts as true the factual allegations contained in the complaint, unless they are clearly baseless or fanciful, and

1 construes those allegations in the light most favorable to the plaintiff. See *Neitzke*, 490
2 U.S. at 327; *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960
3 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011).

4 Pleadings by self-represented litigants are liberally construed. *Hebbe*, 627 F.3d at
5 342 & n.7 (liberal construction appropriate even post-*Iqbal*). However, the court need
6 not accept as true conclusory allegations, unreasonable inferences, or unwarranted
7 deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). A
8 formulaic recitation of the elements of a cause of action does not suffice to state a claim.
9 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007); *Ashcroft v. Iqbal*, 556 U.S.
10 662, 678 (2009).

11 To state a claim on which relief may be granted, the plaintiff must allege enough
12 facts “to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A
13 claim has facial plausibility when the plaintiff pleads factual content that allows the court
14 to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
15 *Iqbal*, 556 U.S. at 678. A pro se litigant is entitled to notice of the deficiencies in the
16 complaint and an opportunity to amend unless the complaint’s deficiencies could not be
17 cured by amendment. See *Lopez*, 203 F.3d at 1130-31; *Cahill v. Liberty Mut. Ins. Co.*, 80
18 F.3d 336, 339 (9th Cir. 1996).

19 **III. DISCUSSION**

20 **A. Complaint**

21 Plaintiff labeled her pleading initiating this federal court action as a purported
22 removal of a state court action. See ECF No. 1. Because there is no indication that this
23 is a true and proper removal, Plaintiff’s filing is properly construed as a Complaint
24 initiating action in this federal court. See *Hebbe*, 627 F.3d at 342.

25 Plaintiff appears to be challenging an ongoing state court juvenile dependency
26 action involving her minor child. Compl. at 2. (ECF No. 1). Plaintiff alleges that both she
27 and her prior state court attorney, Daryl Lander were not served with the state court
28 filings related to the state court juvenile dependency action. *Id.* at 3. Plaintiff further

1 alleges her prior state court attorney was “removed without notice or cause.” *Id.* Plaintiff
2 also attaches various emails, letters and state court filings relating to Plaintiff’s legal
3 representation in the state court juvenile dependency action. See *id.* at 5-12.

4 **B. Lack of Subject Matter Jurisdiction**

5 Federal courts are courts of limited jurisdiction and may hear only those cases
6 authorized by federal law. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).
7 Jurisdiction is a threshold inquiry, and “[f]ederal courts are presumed to lack jurisdiction,
8 ‘unless the contrary appears affirmatively from the record.’” *Casey v. Lewis*, 4 F.3d 1516,
9 1519 (9th Cir. 1993) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546
10 (1986)); see *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858
11 F.2d 1376, 1380 (9th Cir. 1988). Without jurisdiction, the district court cannot decide the
12 merits of a case or order any relief and must dismiss the case. See *Morongo*, 858 F.2d
13 at 1380. A federal court’s jurisdiction may be established in one of two ways: actions
14 arising under federal law or those between citizens of different states in which the
15 alleged damages exceed \$75,000. 28 U.S.C. §§ 1331, 1332. “Subject-matter jurisdiction
16 can never be waived or forfeited,” and “courts are obligated to consider *sua sponte*”
17 subject matter jurisdiction even when not raised by the parties. *Gonzalez v. Thaler*, 565
18 U.S. 134, 141 (2012).

19 The Complaint fails to establish the Court’s subject matter jurisdiction. See
20 Compl. The Complaint states no basis for federal court jurisdiction, and none is
21 apparent. No federal cause of action is asserted, and no federal claims are suggested by
22 the facts, to the extent the facts are discernible. This action involves a state court
23 juvenile dependency matter involving purely state law issues. See Compl. Therefore, the
24 Court lacks subject matter jurisdiction based on federal question.

25 In addition, the Complaint fails to establish diversity jurisdiction. Plaintiff fails to
26 state the amount in controversy and does not establish complete diversity of citizenship.
27 On the face of the Complaint, all parties appear to be citizens of California. See Compl.
28 at 1. Plaintiff also identifies in the civil cover sheet that both Plaintiff and Defendants are

1 citizens of California. Compl. at 13; see *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061,
2 1067 (9th Cir. 2001) (“Section 1332 requires complete diversity of citizenship; each of
3 the plaintiffs must be a citizen of a different state than each of the defendants.”).

4 Because there is no diversity of citizenship established here, the Court finds that it also
5 lacks subject matter jurisdiction based on diversity jurisdiction.

6 **C. Failure to Comply with Federal Rule of Civil Procedure 8**

7 Plaintiff’s Complaint also does not contain a short and plain statement of a claim
8 as required by Federal Rule of Civil Procedure 8. In order to give fair notice of the claims
9 and the grounds on which they rest, a plaintiff must allege with at least some degree of
10 particularity overt acts by specific defendants which support the claims. See *Kimes v.*
11 *Stone*, 84 F.3d 1121, 1129 (9th Cir. 1996). The Court is unable to discern what causes
12 of action Plaintiff intends to bring. Although the Federal Rules adopt a flexible pleading
13 policy, even a pro se litigant’s complaint must give fair notice and state the elements of a
14 claim plainly and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649
15 (9th Cir. 1984).

16 The Complaint therefore fails to state a claim on which relief may be granted and
17 is subject to dismissal. See *McHenry v. Renne*, 84 F.3d 1172, 1178-80 (9th Cir. 1996)
18 (affirming dismissal of complaint where “one cannot determine from the complaint who is
19 being sued, for what relief, and on what theory, with enough detail to guide discovery”).

20 **D. Leave to Amend**

21 In considering whether leave to amend should be granted, the Court finds that the
22 Complaint is unintelligible and consists entirely of allegations with no basis in law. See
23 *generally* Compl. The Complaint does not contain facts supporting any cognizable legal
24 claim against Defendants. In light of the Court’s lack of subject matter jurisdiction and the
25 Complaint’s deficiencies, granting leave to amend would be futile. The Complaint should
26 therefore be dismissed without leave to amend. See *Lopez*, 203 F.3d at 1130-31; *Cato*
27 *v. United States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

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1 **IV. MOTION FOR ACCESS TO ELECTRONIC FILING**

2 Plaintiff requests access to the Court's electronic case filing system. (ECF No. 3.)
3 The Local Rules are clear that "any person appearing pro se may not utilize electronic
4 filing except with the permission of the assigned Judge or Magistrate Judge." See Local
5 Rule 133(b)(2). Plaintiff's motion for access to electronic filing does not provide good
6 cause to deviate from this Local Rule. Thus, Plaintiff's motion is denied.

7 **V. CONCLUSION**

8 In accordance with the above, IT IS **ORDERED** that Plaintiff's motion for access
9 to electronic filing (ECF No. 3) is DENIED.

10 In addition, IT IS **RECOMMENDED** that:

- 11 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) be DENIED;
- 12 2. Plaintiff be granted leave to satisfy the filing fee in three (3) monthly
13 installment payments of \$135;
- 14 3. The Complaint be dismissed without leave to amend for lack of subject
15 matter jurisdiction and failure to state a claim, and where amendment
16 would be futile; and
- 17 4. The Clerk of the Court be directed to CLOSE this case.

18 These findings and recommendations are submitted to the United States District
19 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
20 14 days after being served with these findings and recommendations, any party may file
21 written objections with the Court and serve a copy on all parties. This document should
22 be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any
23 reply to the objections shall be served on all parties and filed with the Court within 14
24 days after service of the objections. Failure to file objections within the specified time

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1 may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449,
2 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

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4 Dated: January 6, 2025

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6 CHI SOO KIM
7 UNITED STATES MAGISTRATE JUDGE

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